

June 4, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654
Email hearingexaminer@kingcounty.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E9400581**

CAROLINE FRENCH
Code Enforcement Appeal

Location: 20336 – 78th Place Southwest, Vashon

Appellant: **Caroline French**
4042 – 41st Avenue Southwest
Seattle, Washington 98116
Email: roundrocks@hotmail.com

King County: Department of Development and Environmental Services (DDES)
represented by Sheryl Lux
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1525
Facsimile: (206) 296-6604
Email: sheryl.lux@kingcounty.gov

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal; allow 60 days for submission of Health Department application
Department's Final Recommendation:	Deny the appeal; allow 60 days for submission of Health Department application, or continue the hearing
Examiner's Decision:	Deny the appeal; allow 60 days for submission of new or modified Health Department application; waive civil penalty for violations prior to 1999

ISSUES AND TOPICS ADDRESSED:

Structural remodel without required permit;
Waiver of penalty

SUMMARY OF DECISION:

Property owner's appeal of a notice of code violation for structural repairs and modification of dwelling without a permit is denied; civil penalties for violations that occurred prior to appellant's ownership are waived; and 60 days is granted to recommence permitting process, or obtain demolition permit.

EXAMINER PROCEEDINGS:

Hearing opened: June 2, 2009
Hearing closed: June 2, 2009

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On February 9, 2007, the King County Department of Development and Environmental Services issued a notice of King County code violation, civil penalty order, abatement order, notice of lien, duty to notify ("Notice and Order") to Caroline French. The property subject to the Notice and Order is located at 20336 – 78th Place Southwest (Vashon Island) in unincorporated King County. Caroline French is the owner of the subject property.

The Notice and Order allege violation of the King County code for construction of additions and repair/remodel of a residence without the required permits, inspections and approvals.
2. A timely appeal of the Notice and Order was filed by the appellant on March 5, 2007. The Statement of Appeal asserts that the property has belonged to the appellant's family since the "early 1900's", and that throughout this time, a small single-family residence has existed in the same location as the current residence exists.
3. The appellant acquired the subject property from her father in or about 1999. Prior to that time, repairs, including structural repairs and modifications, were made to the property without required inspections and approvals. Modifications included the addition of a second floor and outside stairway, deck, new doors and windows. The prior owner applied for and obtained building permits for some or all of the repairs and modifications, but failed to obtain inspections and approvals pursuant to the requirements of those permits.
4. The residence on the property has not been modified or remodeled to add a second or multiple dwelling units.
5. KCC 23.36.030.b provides, "if an owner of property where a violation has occurred. . . (demonstrates) that the violation was caused by another person or entity not the agent of the property owner and without the property owner's knowledge or consent, such property owner shall be responsible only for abatement of the violation. . ."
6. The appellant has re-contacted the King County Health Department, and obtained information that indicates that Health Department approval for an improved septic system may be possible, if modifications to the appellant's prior application are made. The appellant has also contracted

with a septic system designer/installer to assist in completing the application and installation of septic system improvements. A reasonable period of time to allow the appellant to re-apply for Health Department approval is 60 days from the date of this decision.

CONCLUSIONS:

1. A single-family residence is located on the subject property as a legal non-conforming use, established prior to the enactment of the King County zoning code, King County critical areas ordinance (sensitive areas code) and Shoreline Management Act. Structural repairs and modifications to the pre-existing residence require a King County building permit, which can only be issued after Health Department approval.
2. Repairs, modifications and an enlargement of the building have been completed without required inspections and approvals by the King County Department of Development and Environmental Services. A new building permit, inspections and approval of the repairs and modifications are required by the King County code. The appellant, as the current property owner, is the only person with the authority to apply for and obtain the required permits, inspections and approvals.
3. The property owner has shown that the current code violation occurred prior to the appellant's ownership of the property. Therefore, the appellant is responsible only for the abatement of the violations, and no civil penalty should be assessed against the current property owner for violations that occurred prior to her ownership.
4. To correct the violations of the King County code for which the appellant is responsible, the appellant should reapply to the King County Department of Health for septic system approval within 60 days of the date of this decision, then apply to King County DDES for a building permit, and obtain the required inspections and approvals for the unapproved construction that has occurred on the property. If the appellant is unable to do so, demolition of the unapproved structural repairs and modifications should be required.

DECISION:

The appeal by Caroline French of the February 9, 2007 Notice and Order is granted in part and denied in part, as follows:

1. The appeal of the civil penalty for violations that occurred prior to the appellant's ownership of the subject property is GRANTED.
2. The appeal of the notice of violation for the construction of additions and repair/remodel of the residence, including foundation repair, addition/repair of decks, addition of windows without the required permits, inspections and approvals, is DENIED. The appellant shall correct this violation of the King County code by obtaining the necessary permits and approvals from the King County Department of Public Health and the Department of Development and Environmental Services pursuant to the following compliance schedule, or shall demolish the uninspected and unapproved additions and repairs pursuant to a valid demolition permit.

Compliance Schedule: A Health Department application for approval shall be submitted within 60 days of the date of this decision.

A Building permit application shall be submitted within 60 days of Health Department approval.

Required inspections shall be requested by the applicant within 90 days from issuance of building permit.

3. If all necessary permits are not obtained, or the foregoing compliance schedule is not met, a demolition permit shall be obtained within 60 days of the denial or failure to comply, and demolition shall be completed within the time allowed by the permit.

The foregoing compliance schedule may be extended at the discretion of the Department of Development and Environmental Services.

ORDERED this 4th day of June, 2009.

James N. O'Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JUNE 2, 2009, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9400581

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing was Sheryl Lux representing the Department. The Appellant did not appear.

The following Exhibits were offered and entered into the record:

- | | |
|---------------|---------------------------------------------------------------------------------------------------------------|
| Exhibit No. 1 | Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for E9400581 |
| Exhibit No. 2 | Copy of the Notice & Order issued February 9, 2007 |
| Exhibit No. 3 | Copy of the Notice of Appeal received February 28, 2007 and Statement of Appeal received March 5, 2007 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5 | King County Department of Assessor records for the subject property |
| Exhibit No. 6 | 2007 aerial photographs of the subject property |
| Exhibit No. 7 | Photographs of subject property taken by Code Enforcement Officer Bill Turner |
| Exhibit No. 8 | Photographs of subject property taken by Code Enforcement Officer Lamar Reed |